Supreme Court, U.S.
FILED

02 259 AUG 8 2002

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

Andrew Monaghan [redacted],
Petitioner,

v.

A. Trebex, P. Sajak, individually and as employees of Sony Pictures; G. Kemp, D. Rains, R. Ebert, D. Ono, D. Sawyer individually and as ABC employees; M. Isner, individually and as CEO employee of Disney Corp.;
C. Henry, K. Curic, T. Savage, F. Colemen, R. Romero, individually and as NBC employees; B. Schnere, K. Carr, J. Elias, R. Mitchell, D. Rather, individually and as CBS employees; O. Winfrey, individually and as shareholder of Harpo Inc.,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

O'Melveny & Myers
Luann L. Simmons
Counsel of Record
114 Pacifica
Ervine, CA 92184
Ph #: 949-737-2900

Andrew Monaghan
Pro Se
P.O. Box 5742
Playa Del Rey, CA 90293

28 pp

QUESTIONS PRESENTED FOR REVIEW

Whether truth is the goal during civil procedures should not the accuracy of a statement offered as evidence be considered equal significantly from the surroundings and circumstances which evidence was obtained?

Whether a district court may choose to dismiss a civil rights complaint through diversion and denial of fact and law?

CORPORATE DISCLOSURE STATEMENT

The parent companies of Defendants are as follows: CBS is owned by Via Com, NBC is parented by General Electric, and ABC by Disney Corp. Sony Pictures has no parent or subsidiary companies. Harpo Inc. has no parent or subsidiary companies.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW.....	i
CORPORATE DISCLOSURE STATEMENT.....	ii
TABLE OF CONTENTS.....	iii
APPENDIX.....	iv
TABLE OF AUTHORITIES.....	v
CONSTITUTION.....	vi
STATUTES.....	vi
RULES.....	vi
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION.....	2
CONSTITUTIONAL CONSIDERATION PROVISIONS, STATUTES AND RULES.....	3
REASONS FOR GRANTING THE WRIT.....	4
STATEMENT OF CASE.....	5
FACTUAL ALLEGATIONS.....	6
CONCLUSION.....	7

APPENDIX

Page

Opinion and Judgment of the United States District Court for Northern California in Andrew J. Monaghan, Jessica M. Monaghan, Jacqueline St.J Monaghan v. A. Trebex, O. Winfrey, R. Ebert, G. Kemp, D. Rains, D. Ono, D. Sawyer, M. Isner, and P. Sajak, Case No. C01-0938..... 1a

Opinion and Judgment of the United States Court of America for 9th Circuit in Andrew Monaghan, Jessica Monaghan, Jacqueline Monaghan v. A. Trebex, O. Winfrey, R. Ebert, G. Kemp, D. Rains, D. Ono, D. Sawyer, M. Isner, P. Sajak, Case No. 01-16560 CT/A6#CV-01-00938..... 10a

Order of Dismissal Andrew J. Monaghan, et al. v. Alex Trebex, et al., Case No. C00-3345..... 17a

Letter to United States Justice Department..... 20a

TABLE OF AUTHORITIES

Page

Cases

Bray v. Alexandria Women's Health Clinic, 42 USC 1985, 113 S.Ct. 753, 506 U.S. 263 122 L.Ed.2d 34 34, 113 S.Ct. 753 No. 90-985..... 6

McDonell Douglas Corp. v. Percy Green, 411 U.S. 792, 36 L.Ed.2d 668, 93 S.Ct. 1817 No. 72-490..... 6

U.S. v. Castro, D.C. 171 1975, 401 F.Supp. 120 *Buckley v. Valeo District College*, 1976 96 S.Ct. 612, 424 U.S. 1 46 L.Ed.2d 659..... 6

Locklear v. State, 1979, 273 N.W.2d 334, 86 Wis. 603..... 6

Snowden v. Huges, Ill., 1944, 64 S.Ct. 397, 321 U.S. 1, 88 L.Ed. 497..... 6

Deefield Hutterian Ass'n v. Speswich Board of Education, D.C.S.D., 1979, 468 F.Supp. 1219..... 6

Washington v. Davis, Dis. Col. 1976, 56 S.Ct. 2040, 426 U.S. 229, 48 L.Ed. 597.....5,6

Barry v. School District of City of Benton Harbor, Michigan, C.A. Mich. 1974, 505 F2d 238..... 6

Powell v. Power, C.A. N.Y. 1970, 436 F.2d 84..... 6

Angell v. Zinsser, D.C. Conn. 1979, 473 F.Supp. 488.....5,6

U.S. v. Uvalde Consol. Independent School Dist. C.A. tex, 1980, 625 F.2d 547..... 6

U.S. v. Dallas County Com'n, C.A. ala 1984, 739 F.2d 1529.. 6

TABLE OF AUTHORITIES - Continued

Page

CONSTITUTION

United States Constitution, Amendment V..... 3,5

United States Constitution, Amendment XIV..... 3,5

STATUTES

28 USC § 1924..... 3
28 USC § 1291..... 2,3
42 USC § 1971..... 3
42 USC Section 1985..... 2,3,5
42 USC § 1983-3..... 2,3,5

RULES

Fed. R. Civ. P. 17..... 3
Fed. R. Civ. P. 12(b)(6)..... 2,3
Fed. R. Civ. P. 23-4(A)..... 3
Fed. R. Civ. P. (d)(1)..... 3

OPINIONS BELOW

The decisions of the United States Court of Appeals of which Petitioner seeks review is listed as Andrew Monaghan, Jessica Monaghan, Jacqueline Monaghan v. A. Trebex, O. Winfrey, R. Ebert, G. Kemp, D. Ono, D. Rains, D. Sawyer, M. Isner, P. Sajak. The opinion also appears in the Appendix to this Petition. The decision of the District Court is listed exactly as above, Case No. 01-16560 CT/A6#CV-01-00938 WHA and the District Court's interpretations and perversion of the Constitution are unbalanced and biased.

STATEMENT OF JURISDICTION

This dangerous, overly worn out petitioner filed the present lawsuit because the unhesitating fools continue their manifestation of ambiguity or unfading, invidious, organized, lawless, on-air discriminating conduct that forces violence on petitioner and his property under 42 USC 1985-3 and 42 USC Section 1983 equivocally confers jurisdiction of being two Federal Civil Rights statutes backing petitioner's complaint. On April 12, 2001, the United States District Court for the Northern District of California filed a reckless judgment. Petitioner appealed that dismissal pursuant to 28 USC 1291 to the Ninth Circuit Appellate Court. On May 28, 2002, the Ninth Circuit Appellate Court contributed and affirmed the lower court's reckless judgment. Petitioner did not, with good reasoning, file for a rehearing; instead, and by the power and guidance of the United States Supreme Court relaxed Rules 12 and 13, filed a petition for a Writ of Certiorari in a timely, washed-up fashion.

CONSTITUTIONAL CONSIDERATIONS PROVISIONS

The Fifth Amendment of the United States Constitution Section 1983 of Title 42 states: every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, suit in equity, or other proper proceedings for redress.

(Fed. R. Civ. P. 12(b)(6))

> (b) Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, crossclaim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the option of the pleader be made by motion...(6) failure to state a claim upon which relief can be granted.

The Fourteenth Amendment of the United States Constitution states this Amendment is broader than Amendment Fifteen as its protective buckler shields all citizens of the United States from abridgment of privileges and immunities of citizens and all from deprivation of life, liberty and property without due process and from denial of the equal protection of the law.

STATUTES AND RULES

28 USC § 1924
28 USC § 1291
42 USC § 1971
42 USC Section 1985
42 USC § 1983-3

Fed. R. Civ. P. 17
Fed. R. Civ. P. 12(b)(6)
Fed. R. Civ. P. 23-4(A)
Fed. R. Civ. P. (d)(1)

REASONS FOR GRANTING THE WRIT

THE APPELLATE COURT'S AND DISTRICT COURT'S DISMISSAL OF MONAGHAN'S CIVIL RIGHTS COMPLAINT ON THE GROUNDS IT WAS FANCIFUL AND VEXATIOUS IS CONTRARY TO WHAT VIEWERS LIKE YOU AND I OBSERVED. THE DEFENDANTS' PARTICIPATED IN "ON AIR" ORGANIZED, LAWLESS, OUT OF CONTROL CONDUCT VIOLATING FOR FIVE YEARS DAILY PETITIONER MONAGHAN'S CIVIL RIGHTS AND PETITIONER SEEKS RELIEF.

THIS COURT'S REVIEW IS WARRANTED BECAUSE CIRCUIT COURTS HAVE IGNORED PLAINTIFF'S EXTRAORDINARY CIVIL RIGHTS CASE INVOLVING TELEVISION PERSONALITIES AND THEIR WISH TO IINFLICT GREAT BODILY HARM ON PETITIONER. RESPECTFULLY MONAGHAN PLEADS HIS PETITION FOR WRIT OF CERTIORARI WILL BE GRANTED.

STATEMENT OF CASE

Because of the Court's possible politically motivated opinions in Monaghan et al. v. Trebex et al., Case No. 01-16560 CT/A6#CV-01-00938 (see *Washington v. Davis*, Dis. Col. 1976 96 S.Ct. 2040, 426 U.S. 229, 48 L.Ed.2d 597), indicates that no resolution of the federal constitutional question presented hinges on imaginable and delusional observation of the facts of the case. Mr. Monaghan offers a new set of facts that proves we have a bona fide constitutional complaint brought under 42 USC 1985 (3) and 42 USC Section 1983 in which the Ninth Circuit affirmed the dismissal of our civil rights case.

Since January 1997, Defendants in Case No. 9803086 till present Case No. C01-00938 (see *Angell v. Zinsser*, D.C. Conn. 1979, 473 F.Supp. 488 and *Bacon v.* Graham, D.C. Ariz. 1972, 348 F.Supp. 996) civil rights complaint have predominantly, through gestures, double meaning comments, innuendoes, threats, shown malice with intent on air to inflict great bodily harm. Monaghan's civil rights guaranteed by the 14th and 5th Amendments of the Constitution of the United States were violated repeatedly daily for five years by Defendants. Plaintiff is entitled to relief for damages he continues to sustain as a result of Defendants' actions.

Petitioner incorporates each and every allegation of his Complaint. Defendants collaborated collectively these actions causing Monaghan severe emotional distress. Defendants' actions were done maliciously, willfully and wantonly on air. United States Attorney General was informed of another problem and immediately pursued with an iron fist witnessing on tape the information of enclosed letter.

FACTUAL ALLEGATIONS

On Sunday evening, July 23, 2002, Petitioner was attacked parked on 9th NW across from a hock shop on H Street. Within five minutes after parking, having side door of van open, roughly fifteen people were gathered around and someone threw a packet of firecrackers inside. Then rocks were hurled, as were a few 4x4s, making contact and visibly damaging the exterior of the van. Petitioner drove away upset and angry, not contacting Metro Police. The infliction of emotional distress is caused from the Defendants on local news broadcasters' crude, ambiguous, invidious, discriminating conduct on air, which continue to inflame and manifest this country's reactions towards Petitioner. His civil rights lawsuit, Case No. CV01-00938, Complaint hopefully will be reviewed because of the preponderance of evidence. See *Snowden v. Hughes*, Ill., 1944, 64 S.Ct. 397, 321 U.S. 1, 88 L.Ed. 497.

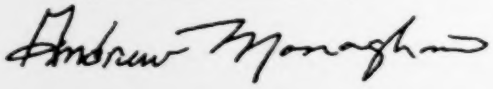
On May 31, 2002, at 6:30 p.m., ABC Nightly News, Peter Jennings started the broadcast with "They heard it on tape and had quick briefing." He then detailed the real news until 6:45 and stated, "Sometimes we make foolish mistakes." Low and behold, George W. Bush was on that news broadcast and made the comment "Gotta keep him from going further," which, like Peter Jennings, had no relevance to news. It was an on air message. See *U.S. v. Dallas County Com'n*, C.A. ala 1984, 739 F.2d 1529.

Regarding cases in Table of Authorities, since each and every case has identical discriminatory civil rights violation problems as Petitioner's (Case No. CV01-00938), these cases should be included in Complaint, e.g., page 14 line 23 through page 15 until line 17 (see *Barry v. School District of City of Benton Harbor, Michigan*, C.A. Mich. 1974, 505 F.2d 238), which, as all the others, were taken right from the 14th Amendment of the United States Constitution.

CONCLUSION

The search for truth is furthered and accomplished with the help of the United States Department of Justice Attorney General's involvement and the District Court's failure to allow demonstration or introduce a prevention cure of the defendants hindering. Based on the foregoing arguments and authorities, Monaghan respectfully requests this Court allow him to proceed with his right to pursue the violations of his constitutional rights by the defendants by granting his Petition for Writ of Certiorari emphatically.

Respectfully submitted,



O'Melveny & Myers
Luann L. Simmons
Counsel of Record
114 Pacifica
Ervine, CA 92184
Ph No.: 949-737-2900

Andrew J. Monaghan, Pro Se
P.O. Box 5742
Plaza Del Rey, CA 90293

FILED
United States District Court
Northern District of California
APR 12 2001
RICHARD W. WIEKING
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW J. MONAGHAN, JESSICA M. MONAGHAN, AND JACQUELINE ST.J. MONAGHAN,

Plaintiffs, No. C 01-00938 WHA

v.

A. TREBEX, O. WINFREY, R. EBERT, G. KEMP, D. RAINS, D. ONO, D. SAWYER, M. ISNER, and P. SAJAK,

Defendants.

ORDER DISMISSING CASE, BARRING PLAINTIFF ANDREW J. MONAGHAN FROM FILING FURTHER RELATED COMPLAINTS, AND CLOSING FILE

Since August 10, 1998, plaintiff Andrew Monaghan has filed at least seven actions, prior to this action, in this court. The seven actions previous to this one are as follows:

C 98-03086 CAL	Andrew Monaghan; Jessica Monaghan; Jacqueline Monaghan v. Ricki Cheese; Fred Fredricks; Paul Moyer; Fred Roggin; Fritz Coleman; Chuck Henry; and Katir Currie.

C 00-00088 CAL	Andrew Monaghan v. Will Wier Kabe and Bill Wier.
C 00-00374 CW	Andrew Monaghan; Jessica Monaghan; and Jacqueline Monaghan v. Disney Corporation.
C 00-00774 MEJ	Andrew Monaghan v. Bob Bee, Pavilions Store Manager.
C 00-03345 JL	Andrew J. Monaghan; Jessica Monaghan and Jacqueline Monaghan v. Alex Trebex; Oprah; Roger Erbert; Gart Kemp; Dallas Rains; David Ano; Dian Sawyer; Pat Sajack; Michael Isner; Tracie Savage; Chuck Henry; Fritz Colemen; Rick Romero; Katie Curry; NBC Studios; Katie Curry; Kretchin Carr; Jonathan Elias; Bill Schnere; Russ Mitchell; Danny Rather; ABC Studios; and CBS Studios.
C 00-04734 MMC	Andrew Monaghan; Jessica Monaghan; and Jacqueline Monaghan v. Alex Trebex; Oprah Winfrey; Rodger Ebert; Gart Kemp; Dallas Rains; David Ono; Dian Sawyer; Pat Sajack; and Michael Isner.
C 00-00566 PJH	Andrew J. Monaghan; Jessica Monaghan; and Jacqueline Monaghan v. Alex Trebek; Oprah Winfrey; Rodger Ebert;

Gart Kemp; Dallas Rains; David Ono; Dian Sawyer; Pat Sajak; Mickeal Isner; Tracie Savage; Chuck Henery; Fritz Colemen; Rick Romero; Katie Kurick, 3000 West Alameda Blvd., Burbank, California; NBC Studios; Kretchin Carr; Bill Schnere; Russ Mitchell; Danny Rather; and CBS Studios, 6121 Sunset Blvd., Los Angeles, Calif. 90028.

In cases C 98-03086 CAL, C 00-00088 CAL, C 00-00374 CW, C 00-00774 MEJ, and C 00-04734 MMC, plaintiff[1] has sought to proceed *in forma pauperis*. In each of those cases his application to proceed *in forma pauperis* was denied and the complaint dismissed. In Case No. C 00-03345 JL plaintiff paid the filing fee. That case was dismissed at the initial case management conference under Rules 8(a) and 11(b)(1) and (3). Plaintiff also paid the filing fee in Case No. C 01-00566 PJH. That case was also dismissed. Judge Hamilton found that the complaint should be interpreted as a notice of appeal in Case No. C 00-4734 MMC and processed as such, and ordered that the filing fee be refunded to plaintiff.

---

[1] In some of these cases, plaintiff Andrew Monaghan was the only names plaintiff. In others, he named his daughters Jessica and Jacqueline Monaghan as plaintiffs. In this action, plaintiff was the only named individual to sign the complaint and other documents in the case. A non-attorney may appear only in his own behalf. *Cato v. United States*, 70 F3d 1103, 1106 (9th Cir. 1995); *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987). This order therefore primarily discusses plaintiff Andrew Monaghan. As discussed below, although this order dismisses the complaint in its entirety, as to all plaintiffs, it bars only Andrew Monaghan, the only plaintiff properly a part of this action, from filing future related complaints.

While some of the underlying facts in plaintiff's previous cases have differed, the actions C 98-03086 CAL, C 00-00088 CAL, C 00-00374 CW, C 00-03345 JL, C 00-04734 MMC, C 00-00566 PJH, and the instant action, C 01-00938 WHA, have primarily sought relief for the same type of alleged injury relating to wrongful conduct that was relayed to plaintiff via television broadcasting. Several of the cases not only name the same defendants but are based on complaints that substantially consist of photocopies of the same handwritten pages. Case No. 00-00774 MEJ is the only one to concern a different type of grievance altogether.

Shortly after the dismissal of Case No. C 01-00566 PJH, plaintiff filed the instant action. The first page of the complaint reads in its entirety as follows:

> Because of Judge P. Hamiltons bias conduct with deliberately prejudicial of effectiveness of Courts business is one reason the above cases have never be heard at all. Case 00/0566 all 19 defendants received summons but never answered complaint Judge Hamilton unreasonable conduct forced above to re-file the same identicall Complaint Interpretation of appeal C 004734 was incorrect. Am not asked to be appealed.

Attached to this cover page is a photocopy of 48 pages of a file-stamped handwritten complaint dated December 8, 2000, in Case No. 00-03345 JL. The allegations in the complaint are rambling, incoherent, and often illegible. Plaintiff alleges a "single scheme [of] invidious misconduct on air which re-occures [sic] everyday...extortion of fear & violence forced upon plaintiff will not rest" (Compl. 4). Some few examples of the facts alleged in he complaint follow. Plaintiff alleges that threats such as "if you don't, we'll kill you," and abusive language such as "you idiot" were forced on him during the CBS Superbowl broadcast (Compl. 5). At times plaintiff seems to allege a class action lawsuit because the harm resulting from the television broadcasting was inflicted across America (*ibid.*), and at times he alleges that the broadcasting was targeted at him only. Defendants have successfully

induced this Country to serious anti-plaintiff mentality. I AM ONE HOSTAGE" (Compl. 9). Plaintiff also relates facts about various instances of damages to his car or cars (Compl. 10-13), an attempted assault on him in the Marina Del Rey showers (Compl. 15), a lunch order that was erroneously bagged to go (Compl. 17), and so on.

On March 17, plaintiff also filed a "Notice: Confer & Meet" in this action, which read as follows:

> With authorization, requirements of Civil L.R. 7-10(b) enables plaintiff filing Expedited Motion on or about 03-03-2001, An addition of plaintiffs dire situation because of defendants on subjects invidious discrimination offers opposing counsel to meet an confer an resolve matter on 03-28-2001 inside Ladds Thai-American Cuisine at 1225 La-Playa at Lincoln San Francisco, Calif. 94122 11:45 a.m. Be there.

On March 8, plaintiff filed a waiver of service of summons form that he had mailed to the defendants.

Even where the filing fee is paid, a district court may dismiss a complaint *sua sponte* if a complaint is frivolous or wholly without merit or fails to name a proper defendant. 28 U.S.C. 1915(e)(2)(B); *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). A complaint is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Where the complaint alleges facts that are "clearly baseless," "fanciful," "fantastic," or "delusional" it may be dismissed as frivolous. *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992). If the pro se plaintiff can cure the factual allegations in order to state a claim, the court must give him or her leave to do so. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). However, if repleading cannot cure the deficiencies the court may dismiss without leave to amend, and even dismiss with prejudice. See *Cato*, 70 F.3d at 1106.

Additionally, federal courts have the inherent power to regulate the activities of vexations litigants. *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990). Under the power of 28 U.S.C. 1651(a), courts may restrict litigants with abusive and lengthy histories from filing further actions. *Ibid.* A court may restrict such litigants' future filing of actions or papers provided that it (1) gives the litigant an opportunity to oppose the order before it is entered; (2) creates an adequate record for review; (3) makes substantive findings as to the frivolous or harassing nature of the litigant's actions; and (4() drafts a sufficiently tailored order. *Id.* at 1145-48.

Accordingly, on March 13, 2001, the Court issued an order to show cause giving notice to plaintiff that he was required to address the following questions in order to avoid dismissal:

1. Why the complaint should not be dismissed as to all plaintiffs other than Andrew Monaghan, the only named individual to sign the complaint and other documents in the case. A non-attorney may appear only in his own behalf. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987).

2. Why the complaint should not be dismissed as to all plaintiffs for lacking any arguable basis either in law or in fact and for being so attenuated and unsubstantial as to be absolutely devoid of merit.

3. Why plaintiffs should not be declared vexatious litigants and barred from filing further actions in this court with respect to these defendants and with respect to these or substantially similar claims without pre-filing review.

Plaintiff Andrew Monaghan filed a written response to the order to show cause on March 29, 2001. He also appeared before the Court on April 12, 2001. He once again stated his

view of the urgency of his claims, as he did in his various complaints. He did not, however, explain to the Court's satisfaction why the complaint was not frivolous or why he should not be barred from filing future related actions.

Plaintiff's claims are frivolous and without merit. Further, plaintiff's claims are "so attenuated and unsubstantial as to be absolutely devoid of merit" such that the action thus falls within the "wholly insubstantial" doctrine. *Neitzke*, 490 U.S. 319 at 327 n.6 (quotations omitted); *Cook v. Peter Kiewit Sons Co.*, 775 F.2d 1030, 1035 (9th Cir. 1985). As discussed above, they are also duplicative of claims that have been previously dismissed. Plaintiff has an abusive and lengthy history of filing these actions against media and entertainment personalities and organizations, and, when the cases are dismissed, simply re-filing them.

Plaintiff has not shown (and the Court sees no reason to believe) that any of his claims can be cured through amending the complaint. The complaint will therefore be dismissed with prejudice. Plaintiff is free to appeal this dismissal and to pursue his other dismissed claims on appeal, but he may not re-file those claims in this Court. Additionally, in light of plaintiff Andrew Monaghan's history of filing these frivolous claims, he qualifies as a vexatious litigant in this district.

In plaintiff Andrew Monaghan's response to the order to show cause, he explained that plaintiffs Jessica and Jacqueline were his daughters and that they were minors when Case No. C 98-03086 CAL was filed. Given that plaintiffs Jessica and Jacqueline did not sign the complaint or personally file anything with the Court, the Court finds that this is sufficient reason not to declare them vexatious litigants. Plaintiff Andrew Monaghan is cautioned, however, that he may not circumvent the bar against his filing future related actions by filing those actions in his daughters' names.

Because the Court has found that he is a vexatious litigant under *De Long*, plaintiff Andrew J. Monaghan is hereby enjoined from filing any further actions against any defendant named in cases C 98-03086 CAL, C 00-00374 CW, C 00-03345 JL, C 00-04734, MMC, C 00-00566 PJH, or C 01-00938 WHA, or arising from the same claims sued upon in those actions, without first obtaining leave of the General Duty Judge of this court. In order to file such action, plaintiffs must make application for leave and the paper shall bear the caption: "Application Seeking Leave to File." The application shall include a list of all the cases plaintiff has filed in this and other courts and the nature of the claims in those actions, and shall be supported by a declaration by plaintiff stating that (1) the matters asserted in the new complaint or papers have never been raised and disposed of on the merits by any court; (2) the claim or claims are not legally frivolous or made in bad faith; and (3) he has conducted a reasonable investigation of the facts and the investigation supports his claim or claims. A copy of this order shall be attached to any application. Failure fully to comply with this order will be sufficient grounds for denial of the application. Plaintiff may, no earlier than April 1, 2005, petition the court to lift this pre-filing review order, setting forth the reasons why the order should be lifted.

This case is DISMISSED. The Clerk of the Court SHALL NOT file any new action by plaintiff Andrew J. Monaghan without pre-filing review by the General Duty Judge in accordance with this order. A copy of this order SHALL be filed in each of the cases enumerated on pages one and two of this order. Judgment SHALL be entered and the Clerk SHALL close the file.

IT IS SO ORDERED.

Dated: April 12, 2001.

/s/William Alsup
WILLIAM ALSUP
UNITED STATES
DISTRICT JUDGE

FILED
United States District Court
Northern District of California
APR 12, 2001
RICHARD W. WIEKING
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW J. MONAGHAN, JESSICA M. MONAGHAN, and JACQUELINE ST.J. MONAGHAN,

No. C01-00938 WHA

Plaintiffs,

JUDGMENT

v.

A. TREBEX, O. WINFREY, R. EBERT, G. KEMP, D. RAINS, D. ONO, D. SAWYER, M. ISNER, and P. SAJAK,

Defendants.
_____/

For the reasons stated in the accompanying order dismissing complaint, JUDGMENT IS ENTERED in favor of defendants.

The Clerk of the Court SHALL close the file.

IT IS SO ORDERED.

Dated: April 12, 2001.

/s/William Alsup
WILLIAM ALSUP
UNITED STATES
DISTRICT JUDGE

FILED
United States Court of Appeals
MAY 28, 2002
CATHY A. CATTERSON
Clerk

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANDREW J. MONAGHAN, No. 01-16560

Plaintiff-Appellant, D.C. No. CV-01-00938-WHA

and MEMORANDUM*

JESSICA MONAGHAN; et al.,

Plaintiffs

v.

A.TREBEX; et al.,

Defendants-Appellees.
_____/

Appeal from the United States District Court
For the Northern District of California
William H. Alsup, District Judge, Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Submitted May13, 2002**

Before: FERNANDEZ, RYMER and WARDLAW, Circuit Judges.

Andrew Monaghan appeals pro se the dismissal of his "invidious discrimination" action against various television personalities and entertainment executives and the district court's order designating him as a vexatious litigant. We have jurisdiction under 28 U.S.C. § 1291. We review de novo dismissals pursuant to 28 U.S.C. § 1915(e)(2). *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). We review the entry of a vexatious litigant order for abuse of discretion. *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990). We affirm.

Monaghan's claim that he is the object of a nationwide conspiracy, wherein various television personalities terrorize him over the airwaves with verbal threats and menacing gestures, lacks an arguable basis in either law or fact, and is therefore frivolous. See *Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996). The district court properly dismissed without leave to amend, because amendment would be futile. See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

To maintain general access to the courts while safeguarding against abusively excessive litigation, a court must satisfy four prerequisites before entering a vexatious litigant order: "(1) a plaintiff must be given adequate notice to oppose a restrictive pre-filing order before it is entered; (2) a trial court must present a adequate record for review by listing

---

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Accordingly, Monaghan's request for oral argument is denied.

the case filings that support its order; (3) the trial court must further make substantive findings as to the frivolousness or harassing nature of the plaintiff's filings; and (4) the order must be narrowly tailored to remedy only the plaintiff's particular abuses." *O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990).

Monaghan was deemed a vexatious litigant after receiving notice and appearing at a show-cause hearing. The district court found Monaghan's claims to be duplicative of equally fanciful allegations filed with the court in seven other cases involving many of the same defendants. The district court's requirement that any future complaints by Monaghan must undergo pre-filing review is appropriately narrow. On this basis, the district court acted within its discretion in entering the vexatious litigant order. See *DeLong v. Hennessey*, 912 F.2d 1144, 1147-49 (9th Cir. 1990).

AFFIRMED.

FILED AND ENTERED
MAY 28, 2002

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 01-16560
CT/AG#: CV-01-00938-WHA

ANDREW MONAGHAN
Plaintiff-Appellant
and

JESSICA MONAGHAN;
JACQUELINE MONAGHAN
Plaintiffs

v.

A.TREBEX; O. WINFREY; R. EBERT; G. KEMP; D. RAINS; D. ONO; D. SAWYER; M. ISNER; P. SAJAK
Defendants-Appellees

APPEAL FROM the United States District Court for the Northern District of California (San Francisco).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California (San Francisco) and was duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

ORIGINAL FILED
United States District Court
Northern District of California
FEB 14, 2001
RICHARD W. WIEKING, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF

SUMMONS IN A CIVIL CASE

CASE NUMBER: C 01 0566 PJH

TO: Alex Trebex, Oprah Winfrey, Rodger Ebert, Gart Kemp, Dallas Rains, David Ono, Dian Sawyer, Pat Sajak, Michael Isner, Tracy Savage, Chuck Henry, Fritz Coleman, Rich Romero, Katie Kurick, Kretchen Carr, Jonathan Elias, Bill Schnere, Russ Mitchell, Dan Rather

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

Mr. Andrew John Monaghan, Pro Se
P.O. Box 5742
Playa Del Rey, California 90293

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

RICHARD W. WIEKING
CLERK

Feb 5, 2001

/s/Mary Ann Buckley
(BY) DEPUTY CLERK

FILED
United States District Court
Northern District of California
FEB 15, 2001
RICHARD W. WIEKING, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDREW J. MOAGHAN, et al.,
Plaintiffs,

v.

ALEX TREBEK, et al.,
Defendants.
/

No. C-01-0566 PJH

ORDER

TO THE PARTIES AND THE CLERK OF THE COURT:

Plaintiff filed this action on February 5, 2001. The court has reviewed the complaint, and finds that it should be interpreted as a notice of appeal of case No. C-00-4734 MMC, in which judgment of dismissal was entered on January 18, 2001. Accordingly, the clerk is directed to close the file of this case, which is hereby DISMISSED, and to process plaintiff's notice of appeal in the earlier-filed case.

In addition, the docket indicates that plaintiff paid a filing fee of $150.00 when the "Complaint" in this case was filed and the new case number was assigned (Receipt No. 3318812). The clerk is hereby directed to refund the full amount of the filing fee to plaintiff.

IT IS SO ORDERED.

Dated: February 15, 2001

/s/Phyllis J. Hamilton
PHYLLIS J. HAMILTON
United States District Judge

cc: Counsel of Record, Judge Chesney, Tracy Lucon, Finance Clerk

FILED
United States Court of Appeals
APR 6, 2001
CATHY A. CATTERSON
Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANDREW MONAGHAN
Plaintiffs-Appellants,

v.

ALEX TREBEK; et al.,

Defendants-Appellees.
_____/

No. 01-15454
DC No. CV-01-00566-PJH
Northern California
(San Francisco)

ORDER

Appellants' motion to voluntarily dismiss this appeal is granted. The appeal is dismissed pursuant to Federal Rule of Appellate Procedure 42(b).

A certified copy of this order sent to the district court shall act as and for the mandate of this court.

For the Court:

CATHY A. CATTERSON
Clerk of the Court

/s/Linda K. King
Linda K. King
Deputy Clerk

pro 4.2

ORIGINAL FILED
United States District Court
Northern District of California
APR 16, 2001
RICHARD W. WIEKING
Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDREW J. MONAGHAN, et al., No. C 00-3345 JL

Plaintiffs, ORDER OF DISMISSAL

v.

ALEX TREBEK, et al.,

Defendants.
_____/

This matter was on the court's calendar for Case Management Conference on December 20, 2000. Plaintiff Alexander Monaghan appeared pro se. Luann L. Simmons, O'MELVENY & MYERS, appeared specially on behalf of Defendant Sony. No other defendants appeared. Plaintiff consented to the jurisdiction of the magistrate judge, pursuant to 28 U.S.C. § 636(c). The court dismissed the case by a verbal order from the bench at the Case Management Conference, but hereby presents the reasoning behind the order.

BACKGROUND

Plaintiff claims to have been homeless since 1997. He presently lives in his van, at Lincoln Boule4vard and LaPlaya, not far from Ocean Beach in San Francisco. His allegations are summarized below.

He alleges that the clerk at a "deli across the street from United States District Court Northern District California Federal Building" gave him his lunch order in a bag, implying tha he should take it and leave. He nevertheless then sat down at a table and ate his lunch. On June 5, 2000, "Riberti" a newscaster for CBS Channel 5 broadcasting live from an elementary school saw Plaintiff and stated "get out of town."

Plaintiff complains also that television personalities such as Alex Trebek, Oprah Winfrey and Diane Sawyer can see him through the television screen, observe him against his will, and make threatening gestures and speak to him. Plaintiff claims a cause of action for invasion of privacy due to the defendants' seeing and hearing him through his television and for some form of libel by their ruining his reputation and that of his daughters. Plaintiff has two daughters, ages 190 and 20, whom he has not seen since December of 1984.

He claims the police have stopped his car and searched it because of what they see about him on television. Plaintiff believes that defendants have incited a man named Bear to follow him while carrying a concealed knife. He also describes other incidents where cars have followed his van and unknown assailants have thrown rocks at it.

He asks for $500 million in damages.

ANALYSIS

The Complaint was filed September 14, 2000. Plaintiff should properly have served at least one Defendant by January 14, 2001 as required by Rule 4(m). The proof of service is defective because no summons was issued and there is no indication either that personal service was made on the defendants or that the addresses where the copies of the complaint were mailed are where the agents for service of process are located. Rule 4, Federal Rules of Civil Procedure. The attorney who appeared specially for Sony at the Case

Management Conference had been notified that the complaint was received in the mail, but no proper service on the corporation was made. No other defendants appeared, specially or otherwise.

The court has discretion to dismiss the complaint with leave to amend, after the time for service has run. However, Plaintiff's pleading and his verbal responses at the Case Management Conference indicate to the court that Plaintiff's allegations are based on delusions rather than reality. Rule 8(a), Federal Rules of Civil Procedure, provides that in order to state a claim for relief a plaintiff must set forth a short and plain statement of the grounds both for the court's jurisdiction and on which plaintiff is entitled to relief. There is nothing which this court or any other court can do which will relieve Plaintiff. Accordingly, for good cause appearing,

IT IS HEREBY ORDERED that this case is dismissed with prejudice. The clerk shall close the file.

DATED: April 16, 2001

/s/James Larson

James Larson

United States Magistrate Judge

Andrew Monaghan
P.O. Box 5742
Playa Del Ray, CA 90293
May 27, 2002

United States Attorney General
950 Pennsylvania Avenue
Washington, DC 20530-0001

RE: Forced Violence, Threats

Dear Sir:

This person, Christopher, around 7:55 a.m., 05/27/02, on NBC break off from Today Show, to local news, live out of Burbank, California, Studio intentionally aggrieved me. The person is NBC weather broadcaster representation demanding for your intervention. Here's why. Regardless at the end of the weather report Christopher said, "Stay away from there; it's got the plague." What has me dangerously angry is then he said in a low voice, no nonsense tone of voice, "KILL IT." Then Paul, who talks about traffic, began with "We're in trouble." Their utterances have induced and hampered my well being. Still homeless and living out of a van and my freedom from forced violence from on air actual malice and ill will against me is dangerously a struggle from this ongoing hate against my life. I'll be merciless if I were you, sir; I tell the truth.

Sincerely and thank you,

/s/Andrew Monaghan

Because of constant abuse, the TV has been buttoned up, covered. For three weeks it's on.

28 U.S.C. § 2403(a) may apply because constitutionality of an act of Congress was drawn and Solicitor General and Attorney General shall be served. No courts to my knowledge sent notice as defined by 28 U.S.C. § 451 to the above.

On January 5, 2001, Case #C-004734 filed a notice of constitutionality and state violations to Justice Department, Robert Mueller, III, State Attorney General, 455 Golden Gate Avenue, San Francisco, California.